

IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF OKLAHOMA

FILED

MAY 12 2009

JOSEPH DALE WARD,

Plaintiff,

v.

KIM MILLER, et al.,

Defendants.

WILLIAM H. GUTHRIE
Clerk, U.S. District Court
By _____
Deputy Clerk

No. CIV 07-340-RAW-SPS

OPINION AND ORDER

This action is before the court on Defendants Sheriff Ken Grace in his official capacity and Kim Miller's motion to dismiss with prejudice [Docket #42]. As discussed in the court's previous order dismissing other defendants [Docket #32], plaintiff alleged he contracted tuberculosis while incarcerated in the Carter County Detention Center in December 2005, and he was denied proper medical treatment for the disease.

Defendants Grace and Miller have moved for dismissal pursuant to Fed. R. Civ. P. 37(d) for plaintiff's failure to respond to discovery requests. The record shows that on August 12, 2008, Defendant Miller issued interrogatories and document production requests to plaintiff. When plaintiff failed to respond, Miller filed a motion to compel [Docket #40], which was granted on November 6, 2008, for plaintiff's failure to respond to the motion [Docket #41]. Plaintiff was directed to respond to the discovery requests within 20 days, but Defendants Grace and Miller allege plaintiff has failed to comply.

On December 12, 2008, plaintiff was ordered to show cause in writing within ten days why Defendants Grace and Miller's motion to dismiss should not be granted [Docket #46].

Plaintiff also was advised that failure to show cause as directed would result in dismissal of this action. He has not responded to that order.

The Rule 37(d) of Federal Rules of Civil Procedure provides, in pertinent part:

(1)(A) The court where the action is pending may, on motion, order sanctions if:

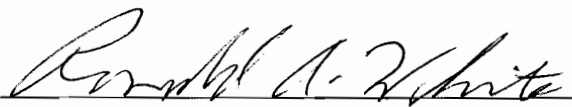
- (i) a party . . . fails, after being served with proper notice, to appear for that person's deposition; or
- (ii) a party, after being properly served with interrogatories under Rule 33 or a request for inspection under Rule 34, fails to serve its answers, objections, or written response. . . .

(3) Sanctions may include any of the orders listed in Rule 37(b)(2)(A)(i)-(vi). . . .

Fed. R. Civ. P. 37(d)(1)(A). Here, the court finds plaintiff clearly has violated the court's orders to respond to the defendants' discovery requests and to show cause why this action should not be dismissed.

ACCORDINGLY, Defendants Sheriff Ken Grace in his official capacity and Kim Miller's motion to dismiss with prejudice [Docket #42] is GRANTED, and this action is, in all respects, DISMISSED pursuant to Fed. R. Civ. P. 37(b)(2)(A)(v).

IT IS SO ORDERED this 12th day of May 2009.


RONALD A. WHITE
UNITED STATES DISTRICT JUDGE